

## Consumer Taxes

TVQ. 75-2/R1      **Transfer of a Business of Which All or Part of the Property is Situated Outside Québec**

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Reference(s):      *Act respecting the Québec sales tax (CQLR, c. T-0.1), sections 16, 22.6, 22.7, 22.32, 23, 75 and 75.1*

*This version of interpretation bulletin TVQ. 75-2 replaces the version of August 29, 1997. The bulletin was revised to take into account legislative amendments enacted since that date and to clarify certain points.*

This bulletin explains how the *Act respecting the Québec sales tax (AQST)* applies to a supply of a business or part of a business where all or part of the property that is the object of the transaction is situated outside Québec.

### APPLICATION OF THE ACT

1. Section 16 of the AQST provides that every recipient of a taxable supply made in Québec must pay the Québec sales tax (QST) on the value of the consideration for the supply.
2. Subject in particular to sections 22.6 and 23 of the AQST, section 22.7 of the AQST stipulates that a supply of corporeal movable property by way of sale is deemed to be made in Québec if the property is delivered in Québec to the recipient of the supply.
3. Sections 22.6 and 23 of the AQST specify that a supply of movable property made in Québec by a person who is not resident in Québec is deemed to be made outside Québec unless the supply is made in the course of a business carried on in Québec or, at the time the supply is made, the person is registered under the AQST.
4. Furthermore, pursuant to section 22.32 of the AQST, a supply that is not deemed to be made in Québec under sections 22.7 to 22.24 and 22.28 to 22.30 is deemed to be made outside Québec.
5. Sections 75 and 75.1 of the AQST provide for tax relief measures where a supplier makes a supply of a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier.
6. Where the election allowed for under paragraph (2) of section 75 of the AQST applies and is made, section 75.1 of the AQST provides that no tax is payable in respect of a supply of any

property or service made under an agreement for the supply, other than a taxable supply of a service that is to be rendered by the supplier, a taxable supply of property by way of lease, licence or similar arrangement or, where the recipient is not a registrant, a taxable supply by way of sale of an immovable.

## Examples

**7.** A large chair manufacturing business incorporated in Québec (the recipient) acquires all the assets of an Ontario business (the supplier) that is not registered for QST purposes and that is incorporated and carries on business solely in Ontario. Under the terms of the agreement for the supply, the sale of the business, as well as the transfer of ownership, take place in Ontario according to Ontario laws.

Under section 22.7 of the AQST, the supply of the property is not deemed to be made in Québec because the property is delivered outside Québec. Pursuant to section 22.32 of the AQST, the supply is therefore deemed to be made outside Québec.

In such circumstances, section 75 of the AQST does not apply where none of the elements constituting the supply of all or part of the business were previously subject to the QST. However, should certain assets be subsequently brought into Québec, the rules provided for under section 17 of the AQST would apply, subject to the exceptions provided for therein. The recipient would therefore be required, in particular, to pay the QST in respect of any such property that is subject to the restrictions on input tax refunds (ITRs).

Although the election provided for under section 75 of the AQST cannot be made, the supplier has no QST to collect from the recipient. However, the latter may, pursuant to section 17 of the AQST, have to pay the QST on the value of certain property brought into Québec.

**8.** A corporation (the supplier) that is registered for QST purposes carries on part of its business in Québec. The supplier transfers all the property of its business to a business incorporated under the laws of Manitoba (the recipient). Some (less than 90%) of the property of the supplier's business is situated in Québec. The recipient is also registered for QST purposes.

As regards the property delivered to the recipient in Québec, section 22.7 of the AQST states that the supply of such property is deemed to be made in Québec. The QST applies to the supply of such property and the election provided for under section 75 of the AQST can be made for such property. Thus, pursuant to section 75.1 of the AQST, the QST does not apply to this property when the election provided for under section 75 of the AQST is made.

As regards the property delivered to the recipient in Manitoba, section 22.7 of the AQST does not stipulate that the supply of such property is deemed to be made in Québec. As a result, the supply is deemed to be made outside Québec pursuant to section 22.32 of the AQST.

Section 75.1 of the AQST does not apply to the property delivered outside Québec, since it is not subject to the QST. Nonetheless, and as in the first example, should certain assets be subsequently brought into Québec, the rules provided for under section 17 of the AQST would apply, subject to the exceptions provided for therein. The recipient would therefore be required, in particular, to pay the QST in respect of any such property that is subject to ITR restrictions.